

Decision 12-10-027 October 25, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U902M) for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2012.

Application 10-12-005  
(Filed December 15, 2010)

Application of Southern California Gas Company (U904G) for authority to update its gas revenue requirement and base rates effective on January 1, 2012.

Application 10-12-006  
(Filed December 15, 2010)

**ORDER REGARDING THE MOTION OF THE UTILITY CONSUMERS' ACTION NETWORK FOR EMERGENCY INTERIM RELIEF**

**Summary**

On August 17, 2012, the Utility Consumers' Action Network (UCAN) filed a motion requesting emergency interim relief concerning intervenor compensation. UCAN's motion seeks Commission authorization to establish an emergency fund which would allow UCAN to recover the costs associated with its contributions to San Diego Gas & Electric Company's above-captioned general rate case proceeding. In the alternative, UCAN requests that it be awarded intervenor compensation at the same time a final Commission decision is issued.

Based on the specific language of the statutes which address the intervenor compensation provisions in the Public Utilities Code, the relief sought by UCAN cannot be granted. Accordingly, UCAN's motion is denied.

### **Background**

Utility Consumers' Action Network (UCAN) filed its motion due to the investment of time and money in litigating San Diego Gas & Electric Company's (SDG&E) general rate case, and the significant legal expenses that UCAN has incurred as a result of internal circumstances concerning the operations of UCAN in connection with "whistleblower litigation, a grand jury subpoena, and questions surrounding certain restricted funds." (UCAN Motion at 2.)<sup>1</sup> Due to the convergence of these various factors, UCAN faces financial difficulty. According to UCAN, "[u]nless it receives emergency funding, UCAN's operating revenues will soon be exhausted," the effect of which "would be to compromise the long term interests of SDG&E ratepayers." (UCAN Motion at 2-3.)

Under the current schedule for the issuance of a decision in this proceeding, "UCAN anticipates that the Commission would issue decisions resolving intervenor compensation requests in Spring 2013," and without the relief it seeks, "UCAN may not survive to receive an award of funding because it will not have the cash needed [to] pay its creditors and staff and support an infrastructure." (UCAN Motion at 3.) According to UCAN, if it "were to close its doors before receiving an award of compensation in this proceeding, its expert consultants may not be fully compensated and some of its creditors would

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<sup>1</sup> According to UCAN, it has already invested in excess of \$1.4 million in this proceeding. This amount exceeds UCAN's total litigation budget for Commission-related activities for almost two years.

not be paid.” (UCAN Motion at 3-4.) UCAN contends that granting its motion will assure that “San Diego utility customers will receive the benefits of the investments UCAN has made in this proceeding, namely those derived from continued representation at the CPUC.” (UCAN Motion at 4.)

UCAN’s request for the Commission to create an emergency fund is for the purpose of allowing UCAN to recover from SDG&E, in advance of a final Commission decision, all or most of UCAN’s costs associated with participating in SDG&E’s general rate case.<sup>2</sup> Following the issuance of a final decision concerning the underlying general rate case proceeding, UCAN proposes to submit a request for an award for intervenor compensation for all expenses that it claimed from the emergency fund, and that the final intervenor compensation award be offset by the amount UCAN received from the emergency fund.

If the Commission does not grant UCAN’s request to establish an emergency fund, UCAN requests that the Commission issue a decision granting UCAN’s request for an award of intervenor compensation at the same time the decision on SDG&E’s general rate case is issued. UCAN contends that the Commission will have before it information to assess whether UCAN made a substantial contribution to the decision, as well as UCAN’s emergency relief claim. UCAN further contends that the Commission has the authority to do this

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<sup>2</sup> UCAN separately submitted “all documentation necessary to justify its request pursuant to the rules established for intervenor compensation requests.” (UCAN Motion at 7.) This documentation was submitted under the title of “Emergency Relief Claim of Utility Consumers’ Action Network.” UCAN requests that if the emergency fund is approved, that the Commission allow UCAN to recover no less than 80% of its request for compensation from the emergency fund. UCAN’s motion also states that it will provide the Commission with any information it needs to verify UCAN’s financial circumstances or other related issues.

because the intervenor compensation statutes could “be interpreted to permit the Commission to award compensation concurrent with the issuance of an order where doing so is justified by unique circumstances and is necessary to protect the long term interests of a group of ratepayers.” (UCAN Motion at 9.)

UCAN’s motion also makes a series of other arguments as to why its motion should be granted. UCAN provides information about the background of its organization, its involvement in the San Diego area, and its participation in Commission proceedings. UCAN also contends that the Commission has the authority to grant the request for an emergency fund under the circumstances described by UCAN. UCAN contends that its motion is distinguishable from the November 2, 2011 Amended Scoping Memo and Ruling of the Assigned Commissioner in Rulemaking 11-02-019, which denied a motion seeking to create an upfront “ratepayer confidence fund to allow the smaller intervenors in the proceeding to hire expert consultants,” because UCAN has already presented its case in this proceeding and is asking to recover the costs it has already spent. (UCAN Motion at 6.) UCAN further contends that its request is not intended to set a precedent, and is being made as a “result of extraordinary expenses related to addressing extraordinary circumstances.” (UCAN Motion at 7.)

No responses to UCAN’s motion were filed.

## **Discussion**

For the reasons set forth below, the Commission cannot grant UCAN’s request to establish an emergency fund, or to issue a decision on UCAN’s emergency relief claim at the same time a Commission decision is issued on SDG&E’s underlying general rate case proceeding.

The intervenor compensation provisions are set forth in Public Utilities Code §§ 1801-1812.<sup>3</sup> The intervenor compensation provisions were originally enacted in 1984, and were subsequently amended by Chapter 942, § 1 of the Statutes of 1992, and by Chapter 300, § 2 of the Statutes of 2003. The following is a description of the applicable statutes which address the relief that UCAN is seeking.

As set forth in § 1801, the purpose of the intervenor compensation statutes “is to provide compensation for reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs to public utility customer of participation or intervention in any proceeding of the commission.”

Section 1801.3 sets forth the intent of the Legislature concerning the intervenor compensation statutes. In subdivision (d), the Legislature states its intent that “Intervenors be compensated for making a substantial contribution to proceedings of the commission....” Subdivision (e) states that “Intervenor compensation be awarded to eligible intervenors in a timely manner, within a reasonable period after the intervenor has made the substantial contribution to a proceeding that is the basis for the compensation award.”

A “substantial contribution” is defined in § 1802(i) as “in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer.”

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<sup>3</sup> All code section references are to the Public Utilities Code.

Section 1803 specifies the conditions for an award of compensation,<sup>4</sup> and states as follows:

The commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who complies with Section 1804 and satisfies both of the following requirements:

- (a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.
- (b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.

Section 1804 sets forth "the procedures that apply in the intervenor compensation process...." (SCE v. PUC, *supra*, at 1048, footnote 7.)

Subdivision (c) states in pertinent part: "Following issuance of a final order or decision by the commission in the hearing or proceeding, a customer who has been found ... to be eligible for an award of compensation may file within 60 days a request for an award." Subdivision (e) states:

Within 75 days after the filing of a request for compensation pursuant to subdivision (c), or within 50 days after the filing of an audit report, whichever occurs later, the commission shall issue a decision that determines whether or not the customer has made a substantial contribution to the final order or decision in the hearing or proceeding. If the commission finds that the customer requesting compensation has made a substantial contribution, the commission shall describe this substantial contribution and shall determine the amount of compensation to be paid pursuant to Section 1806.

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<sup>4</sup> See Southern California Edison Company v. Public Utilities Commission (2004) 17 Cal.App.4<sup>th</sup> 1039, 1048, hereinafter SCE v. PUC.

When construing a statute, one must first look to the words of the statute, and if the legislature has expressly declared its intent through the plain meaning of those words, that intent is binding. (People v. Wright (2006) 40 Cal.4<sup>th</sup> 81, 92; Palmer v. GTE California, Inc. (2003) 30 Cal.4<sup>th</sup> 1265, 1271; People v. Western Air Lines, Inc. (1954) 42 Cal.2d 621, 638.) The above statutory provisions make clear the intent of the Legislature, as well as the process that must be followed in order for an eligible customer to claim intervenor compensation. The legislative intent is clear in § 1801.3(d) and (e), and in § 1803, that a substantial contribution to a Commission decision must be made before any intervenor compensation can be awarded. (See The Utility Reform Network v. Public Utilities Commission (2008) 166 Cal.App.4<sup>th</sup> 522 at 532.) As noted in SCE v. PUC, *supra*, at 117 Cal.App. 4<sup>th</sup> at 1052, “making a substantial contribution is a prerequisite to an award of compensation.”

UCAN’s motion would have the Commission establish an emergency fund, and authorize UCAN to receive monies from this fund before a final decision is issued on the underlying general rate case in which UCAN is participating. The statutory provisions of the intervenor compensation program prohibit an award of intervenor compensation before a decision addressing the customer’s presentation of factual contentions, legal contentions, or specific policy or procedural recommendations, is issued. (See § 1802(i).) Section 1801.3(e) specifically states that intervenor compensation is to be awarded “after the intervenor has made the substantial contribution to a proceeding that is the basis for the compensation award.” (Emphasis added.) As noted by the state Court of Appeals in a case involving UCAN and the Commission, although the Commission has broad discretion, the Commission cannot change state law. (UCAN v. Public Utilities Commission (2004)

120 Cal.App.4<sup>th</sup> 644, 655.) Nor does the Commission have the authority to create or authorize an emergency fund for intervenor compensation. As the California Supreme Court noted, by the Legislature's adoption of the intervenor compensation statutes, the Legislature "has foreclosed the notion that an additional implied authority [for the Commission to award intervenor compensation] also exists." (Southern California Gas Company v. Public Utilities Commission (1985) 3 Cal.3d 64, 68.)

Although we sympathize with the plight that UCAN finds itself in, based on the above, the Commission cannot authorize an emergency fund in order to compensate an intervenor before the Commission has issued a decision addressing the contentions and arguments raised by the intervenor. Accordingly, UCAN's motion for the Commission to establish an emergency fund is denied.

We now turn to UCAN's alternative request that the Commission issue a decision on its request for an award of compensation at the same time the underlying decision addressing SDG&E's general rate case is issued. UCAN argues that the Commission will have everything it needs in order to issue a decision awarding compensation based on UCAN's emergency relief claim. In addition to UCAN's emergency relief claim requesting an award of intervenor compensation, UCAN contends that the Commission will also have before it the separate decision which will address SDG&E's general rate case and UCAN's contentions and arguments. UCAN assumes that the Commission will adopt one or more of the contentions and arguments of UCAN in the underlying general rate case decision, and therefore a substantial contribution will be established, upon which UCAN's emergency relief claim can be acted upon.

This alternative relief requested by UCAN cannot be granted either. As noted earlier, § 1804 sets forth the procedures for an intervenor to claim intervenor compensation. Section 1804(c) specifically provides that “following issuance of a final order or decision by the commission in the hearing or proceeding,” the eligible customer has 60 days in which to file a request for an award. (Emphasis added; *see* Rules of Practice and Procedure, Rule 17.3.) In addition, § 1804(e) provides in part that “within 75 days after the filing of a request for compensation pursuant to subdivision (c) [of §1804] ... the commission shall issue a decision that determines whether or not the customer has made a substantial contribution to the final order or decision in the hearing or proceeding.” (Emphasis added.) These statutory provisions make clear that a request for an award of compensation cannot be filed until a final order or decision is issued. Accordingly, UCAN’s emergency relief claim is premature and will not be acted upon, and UCAN’s request that the Commission issue a decision on its emergency relief claim for an award of compensation is denied for the reasons stated above.

### **Comments on Proposed Decision**

The proposed decision of ALJ John S. Wong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. On October 11, 2012, UCAN filed comments on the proposed decision. Those comments have been considered, but no changes to the decision are necessary.

### **Assignment of Proceeding**

Mark J. Ferron is the assigned Commissioner and John S. Wong is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. UCAN's motion requests Commission authorization to establish an emergency fund to allow UCAN to recover its costs associated with its contributions to SDG&E's general rate case proceeding, or in the alternative, for the Commission to issue a decision on UCAN's emergency relief claim at the same time a final Commission decision is issued on SDG&E's underlying general rate case.

2. UCAN's motion to establish an emergency fund, and to authorize UCAN to receive monies from this fund before a final decision is issued on the underlying general rate case, is prohibited under the intervenor compensation statutes.

3. UCAN's emergency relief claim, requesting an award for intervenor compensation, is premature.

### **Conclusions of Law**

1. The intervenor compensation statutes make clear the intent of the Legislature, as well as the process that must be followed in order for an eligible customer to claim intervenor compensation.

2. A substantial contribution to a Commission decision must be made before any intervenor compensation can be awarded.

3. Section 1804(c) and (e) make clear that a request for an award of compensation cannot be filed until the underlying final order or decision is issued.

4. UCAN's emergency relief claim will not be acted upon.

5. UCAN's motion should be denied in its entirety.

**IT IS ORDERED** that:

1. The August 17, 2012 motion of the Utility Consumers' Action Network (UCAN) to establish an emergency fund in order to compensate UCAN for its participation in this general rate case proceeding, or in the alternative, to issue a decision on its emergency relief claim for an award of compensation at the same time a final decision on the general rate case proceeding of San Diego Gas & Electric Company is issued, is denied.

2. Application (A.) 10-12-005 and A.10-12-006 remain open.

This order is effective today.

Dated October 25, 2012, at Irvine, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners